

CITY OF CORAL GABLES
OFFICE OF THE CITY ATTORNEY

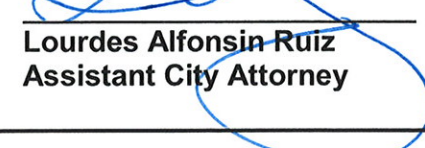
-MEMORANDUM-

TO: PLANNING & ZONING BOARD

DATE: November 24, 2008

FROM: 
Elizabeth M. Hernandez
City Attorney

**SUBJECT: Zoning Code Amendment
Definition of Family**


Lourdes Alfonsin Ruiz
Assistant City Attorney

Attached hereto please find a copy of a draft, proposed amended ordinance regarding the definition of "family" in the Zoning Code. The new Zoning Code currently has "family" defined under Article 8 as follows:

Family means one (1) or more persons related by blood, adoption, marriage, or foster care relationship under Florida Statutes Chapter 409, occupying a single residential unit.

This definition does not meet the constitutional requirements addressed by the United States Supreme Court in the cases of Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) and Moore v. City of East Cleveland, 431 U.S. 494 (1977). In these cases, the Supreme Court carefully looked for some reasonable relationship between the zoning regulation and the goals sought to be achieved by the regulation. Generally, they first examine the goal sought to be achieved to see if it furthers a legitimate governmental objective. They then proceed to scrutinize whether the means designed to reach that end are reasonable. An analysis of these two cases will assist in providing for an appropriate definition of "family" to be included in the Zoning Code.

MOORE V. CITY OF EAST CLEVELAND

The United States Supreme Court, in Moore v. City of East Cleveland, 431 U.S. 494 (1977), held that, in keeping with due process, a zoning ordinance may not differentiate between relatives of varying degrees of relationship. Mrs. Moore lived in East Cleveland with her son and her two grandchildren who were first cousins. Early in 1973, Mrs. Moore received a notice of violation of the city's housing code ordinance, stating that one of her grandchildren was an "illegal resident." The zoning ordinance limited the definition of a family member to one related to the nominal head of the household, provided that such person is not part of the extended family. Moore refused to remove her grandson from her home, and the city of East Cleveland filed a criminal charge against her. She was convicted and her conviction was upheld in the appeals court. Mrs. Moore appealed this decision to the U.S. Supreme Court.

The Supreme Court ruled that no city should be allowed to force its adults and children to live within certain narrowly defined family patterns and recognized that the ordinance was discriminatory. It concluded that Moore had been deprived of her liberty in violation of the due process clause of the 14th Amendment. The Court identified the fact that the zoning ordinance under dispute was clearly exclusionary in its attempt to restrict certain groups by removing non-immediate family members from households. In his lead opinion, Justice Powell stated that "the tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition." Due process, then, would seem to require that any such definition eliminate distinctions among familial degrees.

VILLAGE OF BELLE TERRE V. BORAAS

However, in Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), a Village zoning ordinance restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses. The ordinance defined family as:

[o]ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.

The Boraas' owned a house in the village. They leased it to six unrelated college students and were subsequently cited for violating a zoning ordinance that limited occupancy in single-family dwellings to traditional family units or to groups of not more than two unrelated people. The owners of the house plus three of the tenants brought suit challenging the ordinance. Among their claims was the assertion that the ordinance violated their constitutional right of privacy. The Court rejected that argument and upheld the ordinance, saying that it bore a rational relationship to a permissible state objective. In his opinion, Justice Douglas stated that "a quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. The police power is not confined to elimination of filth, stench, and unhealthy places."

CONCLUSION

For a definition of "family" to be constitutionally permissible, it is necessary to ensure that alternative definitions of family include within them both traditional family units and non-traditional groups to whom the courts have extended due process protections. In this case, the attached ordinance shall define "family" as follows:

Family means one (1) or more persons occupying a single residential unit when all members are related by blood, marriage, or adoption and three (3) or less persons unrelated to any other occupant (excluding servants). The term "family" shall not be construed to mean fraternity, sorority, club, or institutional group, student housing or more than three (3) unrelated persons as defined herein.

This definition meets the constitutionally defined requirements as set forth in Village of Belle Terre, supra and Moore, supra.

Attachments.

cc. Maria A. Jimenez, Interim City Manager
Dona Lubin, Assistant City Manager
Catherine Swanson, Assistant City Manager
Eric Riel, Planning Director
Edward Weller, Interim Director, Building & Zoning
Martha Salazar-Blanco, Zoning Administrator